

MARYLAND-DISTRICT OF COLUMBIA UTILITIES ASSOCIATION ENVIRONMENTAL SECTION ANNUAL CONFERENCE

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Baltimore District
October 2, 2018
Cambridge, Maryland

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US Army Corps
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WETLANDS AND WATERWAYS PERMITTING UPDATE

- Overview
- Regulatory Authorities
- Department of the Army (DA) Permits
- Issues/Developments
- Pre-Application Process
- Emergency Work
- Summary

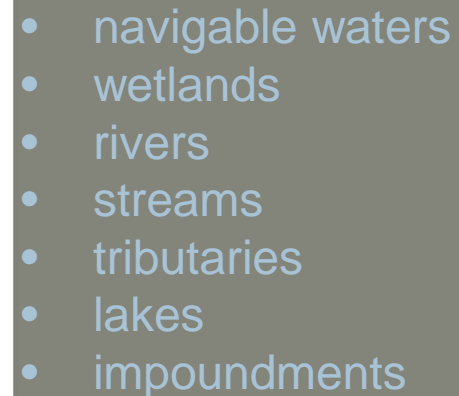


BALTIMORE DISTRICT REGULATORY BOUNDARIES



Maryland
Section
Northern

Maryland
Section
Southern



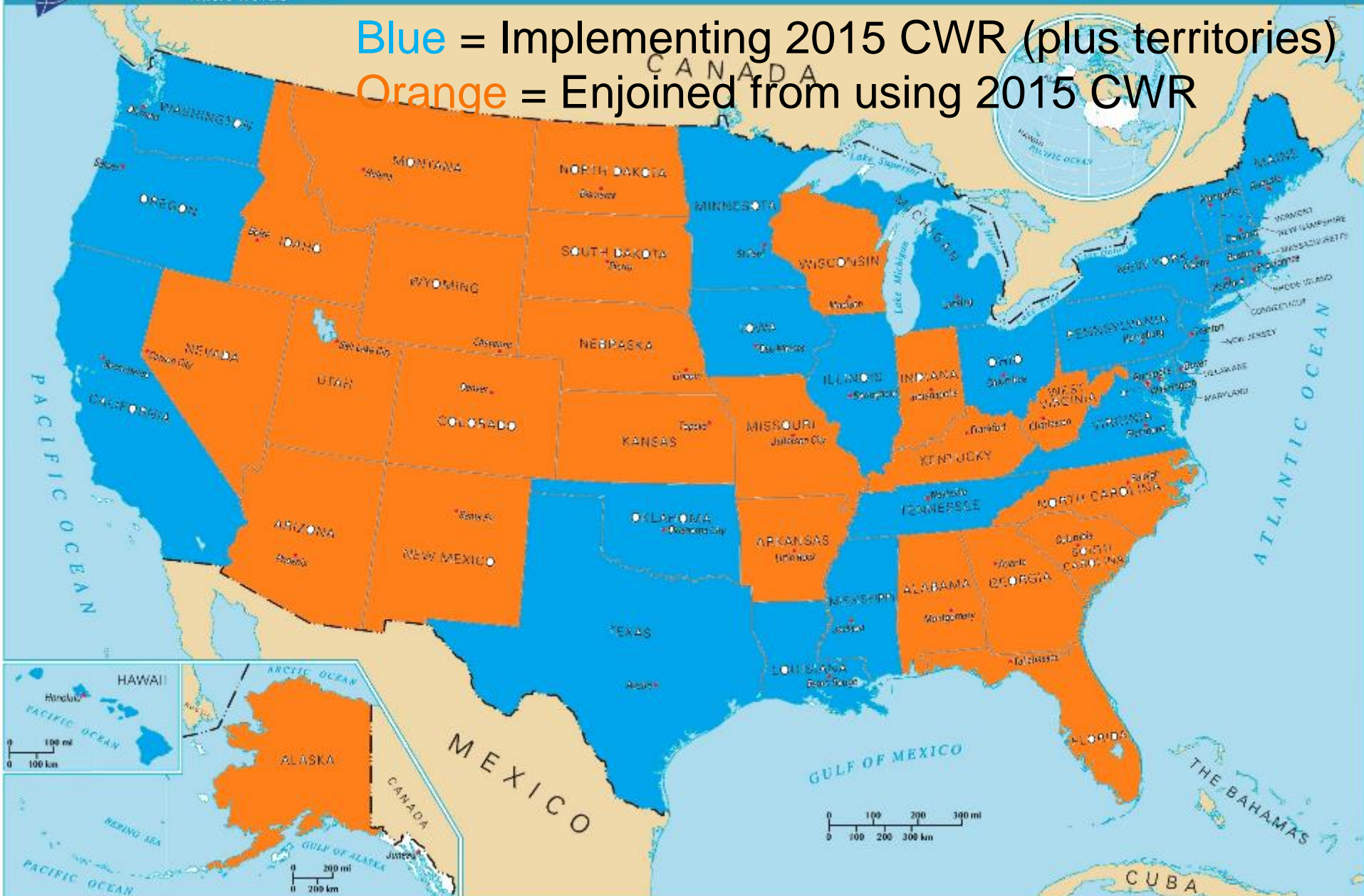
Typical examples
of regulated activities

All filling activities, utility lines, outfall structures, road crossings, beach nourishment, riprap, jetties, some excavation activities, etc.

Dredging, marinas, piers, wharves, floats, intake / outtake pipes, pilings, bulkheads, ramps, fills, overhead transmission lines, etc.



Blue = Implementing 2015 CWR (plus territories)
Orange = Enjoined from using 2015 CWR



CORPS REGULATORY AUTHORITIES

The authority of the Corps of Engineers to regulate construction activities or the discharge of dredged and/or fill material is contained in Section 10 of the Rivers and Harbors Act, Section 404 of the Clean Water Act, and regulations promulgated pursuant to these Acts.

Section 10 of the Rivers and Harbors Act of 1899

Corps authorization required for dredging, any obstruction or alteration, and the construction of any structure in, under, or over any “navigable waters of the U.S.”

Section 404 Clean Water Act

Corps authorization required for discharge of dredged or fill material into all waters of the U.S., including jurisdictional wetlands.

PERMIT TYPES

- Standard Individual Permit
- Letter of Permission
- Nationwide Permit
- Regional General Permit
- State Programmatic General Permit



JURISDICTIONAL DETERMINATIONS

APPROVED JURISDICTIONAL DETERMINATION : CORPS will determine which aquatic resources are jurisdictional based on 2015 Clean Water Rule in Maryland. Generally not recommended. If an approved JD is requested, CORPS will discuss request with applicant to determine if necessary (RGL 16-01). Lower priority than permitting.

PRELIMINARY JURISDICTIONAL DETERMINATION: Does not make a jurisdictional call. All waters on site may be jurisdictional. If an approved JD is not requested, a PJD is assumed. Expedites permitting process.

AVOID MINIMIZE AND COMPENSATE

AVOIDANCE : Alternate route, horizontal directional drilling under stream or wetland, use existing infrastructure

MINIMIZATION: Use timber mats to reduce soil compression and minimize impact area, reduce the LOD at the aquatic resource crossing, use existing right-of-way, impact lower quality resource to preserve higher quality resource (REDUCE WETLAND CONVERSION)

COMPENSATION: Wetland compensation will be required for permanent impacts (loss) and permanent conversion (PFO/PSS to permanent PEM) greater than 5,000 square feet.

Corps level of involvement in project review is commensurate with the degree of impact

INDIVIDUAL PERMIT

- Large, complex projects that exceed limits and terms of general permits
- Public notice to interested parties, general public, adjacent property owners', and coordination with involved agencies
- Environmental Assessment
 - Public interest review | Section 404(b)(1) Guidelines
 - ESA / NHPA / TRIBAL
- Alternatives analysis required
 - On-Site and Off-Site
 - LEDPA
- Significantly longer review timeframe than MD-SPGP-5

LETTER OF PERMISSION

- The submerged work in tidal waters as part of a project that would not include any fill impacts to waterways and wetlands
- Coordination with resource agencies and adjacent property owners
- Decision document
 - Public interest review



Avoid obstruction to navigation

PERMIT PROCESSING

Nationwide Permit

Valid in Washington, DC

NWP #12, Utility Line Activities

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.



Maryland State Programmatic General Permit-5

Valid in Maryland

This activity authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated mechanized land clearing, excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours.

Activities

- Utility Lines c (1)
- Utility Foundations c (2)
- Utility Access roads c (3)

NATIONWIDE PERMIT

EXPIRES MARCH 18, 2022

- Utility lines: Any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication.
- Utility line substations: construction, maintenance, or expansion of substation facilities associated with a power line or utility line.
- Foundations for overhead utility line towers, poles, and anchors: construction or maintenance of foundations for overhead utility line towers, poles, and anchors i provided the foundations are the minimum size and separate footings for each tower leg.
- Access roads: construction of access roads for the construction and maintenance of utility lines.

All, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP may authorize utility lines in or affecting navigable waters.

Must follow all regional and general conditions

STATE PROGRAMMATIC PERMIT EXPIRES SEPTEMBER 30, 2021

- Must have: *minimal* individual and/or cumulative adverse environmental effects
- Overall Impact Threshold: one acre of impact, both *permanent and temporary*, to waters of the U.S., including jurisdictional wetlands, and/or 2,000 linear feet of streams, rivers, and other open waters
- Adverse impacts: must be avoided/minimized to the maximum extent practicable *on-site*

UTILITY LINE CATEGORIES

Category A - not to exceed 10,000 square feet and/or 200 linear feet wetlands/waters

- Generally *non-reporting* to the Corps
- Maryland Department of the Environment reviews project and issues Federal authorization on behalf of the Corps
- No tidal impacts

Category B - not to exceed 1/2 acre or 1 acre and/or 2,000 linear feet wetlands/waters

- *Reporting* to the Corps
- Maryland Department of the Environment forwards the application to the Corps for review
- Corps coordinates project review with Federal/State resource agencies
- Corps verifies authorization

UTILITY LINE ACTIVITIES

Utility Lines

This activity authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated mechanized land clearing, excavation, backfill, or bedding for the utility lines.

An acceptable utility line project must have independent utility, including a defined starting and ending point of the proposed project, and a defensible purpose.

Utility Foundations

This activity authorizes mechanized land clearing, the construction or maintenance of foundations for overhead utility line towers, poles, and anchors, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Utility Access Roads

This activity authorizes the mechanized land clearing and construction of access roads for the construction and maintenance of utility lines, including overhead power lines. Individual impacts for a utility project will be added cumulatively for review of the overall project.

ISSUES – PERMIT PROCESS

Complete Plans and Information

The application review process can be delayed if all information is not included in initial submittal

- Single and complete project
 - All proposed resource impacts
- Staging areas
- Method of work
- Project dimensions
 - Line depth below bottom substrate at points across the waterway
 - Total length and length across waterway (mean high water)
 - Focus on aquatic resource impacts
 - Avoid too many layers on maps

UTILITY/FIBER OPTIC/BROADBAND LINE CHECKLIST

- ✓ Detailed written description of the project, including dimensions
- ✓ Latitude and longitude at regular intervals along the project
- ✓ Dimensions of impact areas within waters of the U.S., including wetlands, streams, tidal waterways, and others
- ✓ Dimensions of structures and/or fill within waters of the U.S., including wetlands, streams, tidal waterways, and others
- ✓ Controlling depth of proposed cable components below mean low water (MLW) or depth below soil/water/ice interface
- ✓ Describe composition of substrate in submerged and terrestrial areas (sand, clay, gravel, rock)
- ✓ Describe the overall project and provide a general location map of the entire project from beginning to end, regardless of Corps District regulatory boundary
- ✓ Typical design and dimensions of the fiber optic cable system, including all structural components and materials submerged, resting on bottom, and terrestrial, identify those sections of cable that are proposed to be submerged, resting on bottom, or terrestrial
- ✓ Historic properties information
- ✓ Threatened and endangered species information
- ✓ Essential Fish Habitat information
- ✓ Oyster bar information (natural and leased)
- ✓ Land or waterway use of project locations
- ✓ Typical methods of work and impact type and areas due to specific methods, including width and depth of trench, stabilization of the substrate, and disposal of excess excavated material
- ✓ Describe avoidance and minimization of impacts
- ✓ Describe why impacts were not avoided
- ✓ Describe purpose of the project, including public need and benefit
- ✓ Relationship of project location to oyster bars, artificial reefs, submerged historic sites, navigation fairways and Federal channels, waterfowl concentration areas, shellfish harvesting areas, fishing areas, scientific study areas, and other potential areas of concern in tidal waters
- ✓ Describe maintenance, including preservation of structures and protection methods
- ✓ Indicate method of marking cable location
- ✓ Indicate method of locating post installation cable
- ✓ Landing sites:
 - a) structures and attendant features
 - b) mean high (MHW) and MLW
 - c) relationship of landing site to shoreline and fixed structures, such as piers, bulkheads, and other appurtenant facilities
 - d) relationship of landing site area to submerged aquatic vegetation, mudflats, wetlands, and

ISSUES – PERMIT PROCESS

Contingency plans must be included in the permit application.

- Drilling operations, monitoring and detection
- Immediate mobilization
- Containment
- Control and recovery of drilling fluids
- Clean up/dilution
- Remediation
- Monitoring and reporting

Permit decision could include:

- Potential time-of-year restriction
 - Endangered species
 - Essential Fish Habitat
 - Species spawning/migration/life cycle activities



RECENT DEVELOPMENTS

- Using 2015 Clean Water Rule in Maryland
- One Federal Decision (Combined 404 and 408 review)
- MDSPGP-6 Public Notice comments

PRE-APPLICATION CONSULTATION

- Agencies meet with the applicant in advance of a permit application
 - Corps/MDE can provide guidance and preliminary feedback regarding the *regulatory feasibility*, and potential suggestions on *alternatives* that could make the project more feasible
- Agencies offer input at the planning stages of a project (field/office meeting)
 - Expedites the permit process; *cost and time savings* to applicants
- Discuss documentation requirements and alternatives (e.g., alignments; open trench vs. horizontal directional drilling) that should be evaluated
 - Before you invest time and resources, contact the Corps/MDE to schedule a pre-app meeting

PRE-APPLICATION CONSULTATION

Monthly Joint Evaluation (JE) Meetings

- Contact Jon Stewart, Eastern Permit Section Chief
jon.stewart@Maryland.gov
- Last Wednesday each month
- Federal and State agencies participate

Environmental Protection Agency
U.S. Fish and Wildlife Service
National Marine Fisheries Service
Maryland Department of the Environment
Maryland Department of Natural Resources
U.S. Coast Guard, as requested.

EMERGENCY WORK

- Minimum necessary to safeguard life/property against imminent danger
- Notify Corps and MDE prior to performing work
- To the extent practicable/feasible, submit the following in writing to Corps/MDE: description/reason for work, location/waterway, site plans, stream diversion plans, quantify impacts, photographs, construction start/end dates
- You should not proceed until you have Corps/MDE approval
- Submit a joint Federal/State application to MDE within 3 days of completing the emergency work, unless granted an extension

MAINTENANCE UMBRELLA PERMITS

- Baltimore Gas & Electric
- Colonial Pipeline
- Transco



MAINTENANCE UMBRELLA PERMITS

- Useful for long utility lines in need of inspection and/or repair
- No need to submit an application for each utility line repair project. Limited information required to be submitted for each proposed impact.
- Category B projects do not need to be coordinated with agencies
- ESA, Tribal and Historic resources have already been coordinated
- Site specific special conditions are included in umbrella permit
- If project impacts exceed MDSPGP-5 thresholds, an Individual DA Standard permit is required.

GOALS

- Fair, reasonable, and consistent decision-making process
- Protect the aquatic environment
- Public service



REMINDERS

- Federal and State permits have different expiration dates
- Permit modifications: require Corps and MDE approval
- Excess fill from trenching must not be discharged/spread into wetlands/waters on-site without authorization
- Construction mats are structures/fill and require authorization
- Wetland conversion (e.g, palustrine forested to emergent) generally requires mitigation
- Return the Corps compliance self-certification form

QUESTIONS



U.S. Army Corps of Engineers Baltimore District

Regulatory Branch Website

<http://www.nab.usace.army.mil/Missions/Regulatory.aspx>

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